



April 26, 2001

Ms. Larissa T. Roeder
Assistant County Attorney
County of Dallas
Frank Crowley Courts Building, LB 19
Dallas, Texas 75207-4399

OR2001-1697

Dear Ms. Roeder:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 146445.

The Dallas County District Attorney's Office (the "district attorney") received a request for information relating to the shooting death of a named individual. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that the requested information is confidential under section 20.02 of the Code of Criminal Procedure. Article 20.02(a) of the Code of Criminal Procedure provides that "[t]he proceedings of the grand jury shall be secret." This office has concluded that grand juries are not governmental bodies that are subject to the Act, so that records that are within the actual or constructive possession of a grand jury are not subject to disclosure under the Act. *See* Open Records Decision No. 513 (1988). We understand you to assert that the information is in the constructive possession of the grand jury because the district attorney holds the information as an agent of the grand jury. *See* Gov't. Code §§ 552.003(B), .0035(a); *see also* Open Records Decision No. 398 at 2 (1983) (grand jury is part of judiciary for purposes of the Act). We find the situation here to be substantially similar to the situation we addressed in Open Records Decision No. 513 (1988). In that decision, a district attorney claimed that all of the information responsive to an open records request and contained in his investigation file was in the constructive possession of the grand jury because the information was held by the district attorney as an agent of the grand jury. The district attorney thus asserted that his entire investigative file was subject to the judiciary exclusion and outside the reach of the Act. In response to this argument, we stated:

Not all of the information at issue here can be deemed to be within the constructive possession of the grand jury. Your investigation began before any information was submitted to the grand jury. Moreover, the grand jury did not formally request or direct all of the district attorney's actions in this investigation. See generally Open Records Decision No. 398 (1983) (audit prepared at direction of grand jury). *Information obtained pursuant to a grand jury subpoena issued in connection with this investigation is within the grand jury's constructive possession. On the other hand, the fact that information collected or prepared by the district attorney is submitted to the grand jury, when taken alone, does not mean that the information is in the grand jury's constructive possession when the same information is also held by the district attorney.* Information not produced as a result of the grand jury's investigation may be protected from disclosure under one of [the Act's] exceptions, but it is not excluded from the reach of [the Act] by the judiciary exclusion.

Open Records Decision No. 513 at 3 (1988) (emphasis added). As explained above, we believe that only those portions of the responsive information obtained pursuant to a grand jury subpoena or at the direction of a grand jury are within the grand jury's constructive possession and therefore subject to the judiciary exclusion and outside the reach of the Act. The information held by the district attorney that is responsive to the request and that was not obtained pursuant to a grand jury subpoena or at the direction of the grand jury is subject to the Act. While it appears that the medical records contained in the submitted information were obtained pursuant to a grand jury subpoena, there is no indication that the remainder of the submitted information was subpoenaed by the grand jury. We find the marked medical records are not subject to release under the Act. Furthermore, any remaining documents in the submitted information that were obtained pursuant to a grand jury subpoena or at the direction of a grand jury are likewise outside the reach of the Act. However, to the extent the submitted information was not obtained pursuant to a grand jury subpoena or at the direction of the grand jury, the information is subject to the Act. We therefore address your claim under section 552.108 of the Government Code with respect to any information that was not obtained by the district attorney pursuant to a grand jury subpoena or at the direction of a grand jury.

Section 552.108 states, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [public disclosure] if:

...

- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication

A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You indicate that the requested information relates to a case that was not billed by a grand jury. Based on the information you provided, we agree that section 552.108(a)(2) is generally applicable to the requested information.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense information, you may withhold the requested information that is subject to the Act based on section 552.108(a)(2).

We also note that the requested information contains an autopsy report that must be released to the extent it was not obtained pursuant to a grand jury subpoena or at the direction of a grand jury. Section 11 of article 49.25 of the Code of Criminal Procedure provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Code Crim. Proc. art. 49.25, § 11. Pursuant to section 11, the autopsy report is a public record and must be released to the requestor to the extent it was not obtained by the district attorney pursuant to a grand jury subpoena or at the direction of a grand jury.

In summary, the submitted medical records and any other information that was obtained at the direction of a grand jury or as a result of a grand jury subpoena are not subject to release under the Act. If the submitted autopsy report was not obtained by the district attorney at

the direction of a grand jury, the district attorney must release the report. The district attorney may withhold the remainder of the information from disclosure under section 552.108, with the exception of basic information about the crime. Based on these findings, we need not reach the remainder of your arguments.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

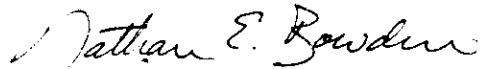
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Nathan E. Bowden".

Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/rr

Ref: ID# 146445

Encl.: Submitted documents

cc: Mr. Ronald E. Bunch
112 South Rogers, Second Floor
P.O. Box 884
Waxahachie, Texas 75168

(w/o enclosures)